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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 969

MINNIE REESE RICHARDSON WRAGG, *Petitioner*,

v.

FEDERAL LAND BANK OF NEW ORLEANS, *ET AL.*

PETITION FOR WRIT OF CERTIORARI

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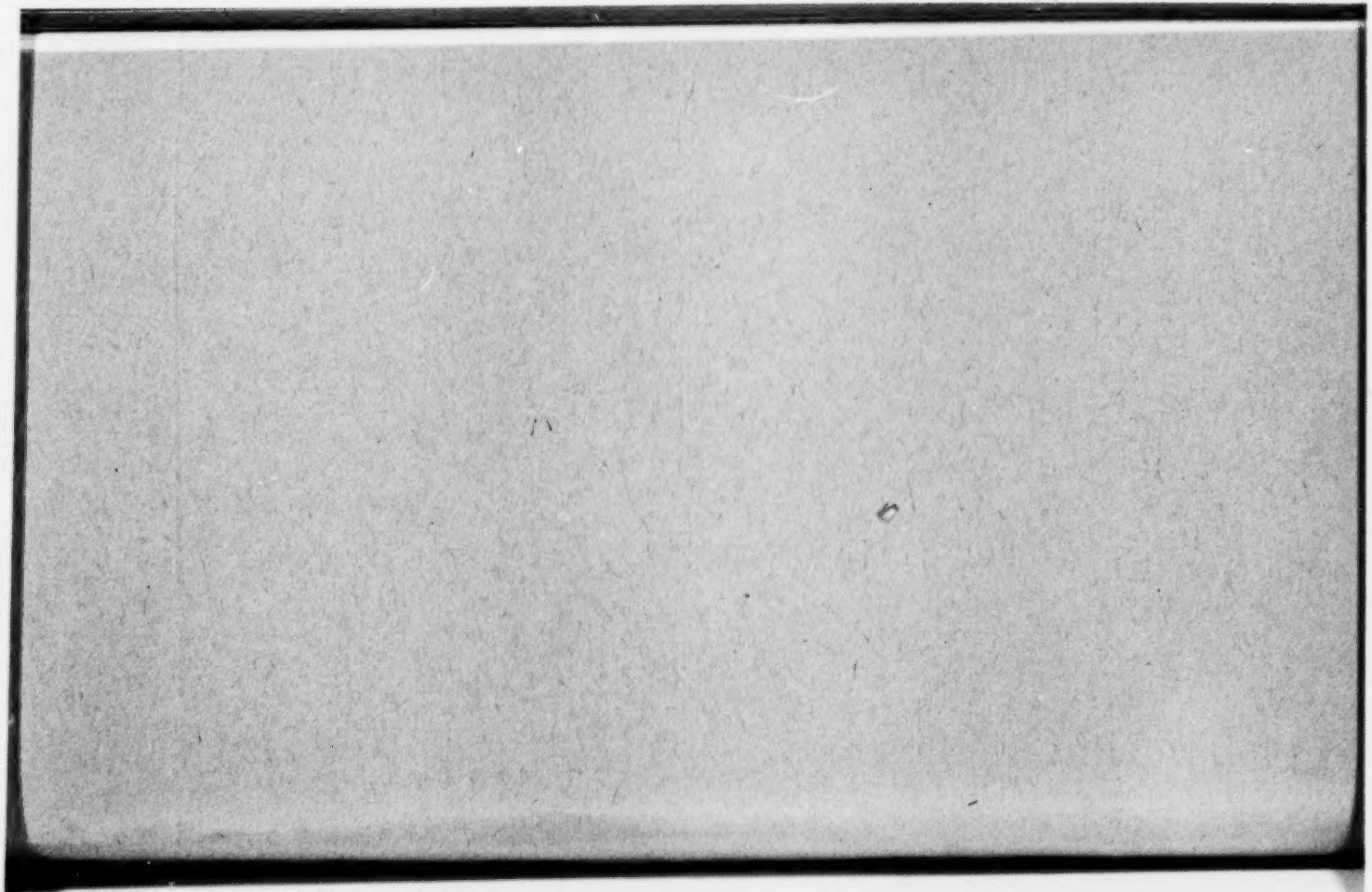

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner Minnie Reese Richardson Wragg respectfully prays for a writ of certiorari herein to review a certain final decision of the Circuit Court of Appeals of the Fifth Circuit, in the above entitled action, the opinion and decision of said court having been rendered and filed on November 7, 1944, and a petition for rehearing which was, after being entertained and considered by said court, denied on December 11, 1944, the effect of which said decision of the Circuit Court of Appeals was that a farm debtor-bankrupt whose petition was duly filed within the time allowed by state law for redemption of property, should not be put in possession of her property under Section 75(s) of the Bankruptcy Act unless she had the right of possession under the state law; and further holding that the real property of a farm debtor-bankrupt should not be administered in the manner provided by Section 75 of the Bankruptcy Act unless the farm-debtor-bankrupt was entitled to possession under the state law; the effect of the decision further was to deny to the farm debtor-bankrupt the benefit of rents, and profits received, and growing timber cut, from the real property during the time that her rights under Section 75 of the

Bankruptcy Law were denied by the inferior courts because of an erroneous construction of the Bankruptcy Act.

QUESTIONS INVOLVED

I.

Whether a farm debtor-bankrupt who has an existing right of redemption from mortgage foreclosure sale, may have her property administered by being placed into possession under Section 75(s) of the Bankruptcy Act.

II.

Whether the right of a farm debtor-bankrupt to have property administered in accordance with Section 75(s) of the Bankruptcy Act should be denied because right to possession under the state law ceased upon default in the mortgage.

III.

Whether the farm debtor-bankrupt whose right to re-file farm debtor proceedings was erroneously denied by the District Court, is entitled to an accounting for rents and profits received and timber removed from the property during the time her right to have the property administered was erroneously denied.

STATEMENT OF FACTS

In 1937, after the Federal Land Bank had obtained a decree of foreclosure, but before foreclosure sale, petitioner filed a petition under Section 75 of the Bankruptcy Act seeking a composition or extension of her debts. The offer of composition not being accepted, the District Court held that petitioner was not entitled to amend her petition so as to proceed under Section 75(s), and directed that the proceeding be dismissed as of January 19, 1938. Petitioner's motion for leave to appeal to the Circuit Court of Appeals in forma pauperis and her petition for certiorari to this Court, were denied (95 F. (2d) 252, 305 U. S.

596). After the farmer-debtor proceeding was dismissed the Federal Land Bank purchased the mortgaged property at a foreclosure sale which was confirmed in April, 1938. In 1939, respondent Federal Land Bank contracted to sell the property to respondent Seth Storrs, the contract stipulating that it was "subject to the statutory right of redemption following foreclosure, if any exists." Alabama allows to the mortgagor a two-year redemption period after foreclosure sale. On March 11, 1940, prior to the expiration of this period, petitioner filed her application praying that the case be reopened and reinstated or, in the alternative, that she be permitted to re-file her farm debtor proceedings, and that her former schedules be deemed a part of the petition. The District Court denied both prayers and was affirmed by the Circuit Court of Appeals (125 F. (2d) 1003). This Court granted certiorari, affirmed the judgment in so far as it refused to reopen the old proceedings, but reversed for denial of the right to re-file farm debtor proceedings and remanded the cause to the District Court for further proceedings (*Wragg v. Federal Land Bank*, 317 U. S. 325).

After remand, petitioner again submitted offer of composition and extension which was rejected, and she amended her petition under Section 75(s) of the Bankruptcy Act and was adjudged a bankrupt. Pursuant to Section 75(s) she then requested that her property be appraised and that she be permitted to remain in possession of said property, under appraisal, to endeavor to redeem it in three years. Pending these proceedings, the United States condemned the greater portion of the land, including the improvements, the portion taken being appraised at Four Thousand Dollars ($4,000.00), which amount was paid into court. The balance of the property, not taken under condemnation, was appraised at Two Thousand, Two Hundred Dollars ($2,200.00). This appraisal was confirmed by the District Court on February 2, 1944.

By a decree of March 10, 1944, the District Court, holding that, since the farm debtor-bankrupt owned no right, title, or interest in and to the property except the statutory right of re-

dempion under Alabama law as modified and extended by Section 75 of the Bankruptcy Act, she was not entitled to possession of the real property, and gave her a period of six months within which to redeem the sixty acres by paying the appraised value of $2,200.00. Petitioner then, in order to have all of the facts before the court, filed a petition setting up the erroneous denial to her in 1940 of her right to re-file the proceedings; alleging that the value of the entire tract of land in 1940 was the sum of $3,500.00 which she was ready and willing to pay, and that her right to redeem for this sum was denied by the erroneous decision of the District Court in 1940; that the property increased in value between 1940 and 1944 to the extent that the property was appraised in 1944 to be worth $6,200.00, and that, in addition, timber of the reasonable value of $1,500.00, which was on the property in 1940 and to which petitioner had title had she been permitted to redeem, had been removed from the property by the respondent S. P. Storrs. This petition alleged that it would be unjust and inequitable to permit the respondents and the parties claiming under them to receive all of the benefits of rents, profits, timber, and increase in value during the period that her rights under Section 75 of the Bankruptcy Act were erroneously denied, and therefore prayed an accounting for rents and profits received and timber cut after 1940, and that she be permitted to redeem at the value in 1940, and that her rights be established as of the time she sought the benefits of the Act and her rights were erroneously denied. This petition was likewise denied by the District Court, and petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit.

The Circuit Court of Appeals on November 7, 1944, rendered its decision and judgment in said cause affirming the judgment of the District Court except in so far as the petitioner's right to accounting for timber cut after the date of the appraisal of the property, which appraisal was affirmed by the Court on February 2, 1944. Petitioner properly filed petition for rehearing which was denied by the Circuit Court of Appeals on Decem-

ber 11, 1944. It is to correct this decision that the present proceedings are prayed.

RULINGS OF THE COURTS BELOW

The District Court in denying petitioner's application for possession of the property rendered a decree but no reported opinion. This decree recited a conclusion of law that the farm debtor-bankrupt owned no right, title, interest, or claim in and to the real property except the statutory right of redemption under Alabama law as modified and extended by Section 75 of the Bankruptcy Act; that she was not entitled to possession of the real property listed in her assets. The District Court in denying the petition for an accounting rendered no opinion which was reported.

The Circuit Court of Appeals for the Fifth Circuit in affirming the judgment of the court below as to the denial of the right of possession, held in its opinion:

> "The right to redeem within two years property sold at execution or foreclosure sale which is established by the Alabama statute is peculiar and strictly limited. It is declared not to be an interest in the land, but a personal privilege, exercisable by the debtor or in succession by other persons named in the statute, but capable of sale by the debtor. The statute requires payment of the entire debt and not merely the price bid at the sale, with ten percent interest per annum, and compensation for taxes paid and improvements made since the sale, and expressly excludes accountability for rents and profits prior to the date of redemption. A court of equity is given jurisdiction to settle any disputes about it. This right the federal Supreme Court, (317 U. S. 325), held to be among the redemption rights covered by Section 75 of the Bankruptcy Act. A provision of Subsection (n) is: 'In all cases where at the time of filing the petition the period of redemption has not or had not expired . . . the period of redemption shall be

extended . . . for the period necessary for the purpose of carrying out the provisions of this section.' Accordingly, although the period of redemption under the statute expired soon after March 11, 1940, the district judge correctly held he had power to give a reasonable time for the exercise of the privilege of redemption in bankruptcy.

"Section 75, however, does not attempt to give the farmer-debtor any interest in land which he does not have under the State law at the time his petition is filed. Mrs. Wragg had lost title and possession of the land over a year before her petition was filed and she had only the personal privilege of redemption extended to her by the Alabama statute. She had no title, no possession, and no right of possession of the land. *The bankruptcy court could give her none unless the land be redeemed.* Storrs bought the land subject to her right to redeem it, but otherwise he was the full owner. *Possession cannot be taken from him without redemption. The bankruptcy court recognized her right as far as it could by reasonably extending the time for redemption, and providing for a sale of the right, if anyone would buy it.*" (Italics supplied.)

In affirming in part and reversing in part the judgment of the District Court as to the right of petitioner to an accounting for rents, profits, and timber, the Circuit Court of Appeals held in its opinion:

"But we think she may be entitled to deduct from the redemption money the sum, if any, received by Storrs from the sale of timber after the filing of her petition. The growing timber was a part of the land itself which was subject to redemption, and the filing of the petition under Section 75, though not a redemption, was a notification that a redemption in bankruptcy was to be undertaken. The farmer-debtor's rights passed at once under the protection of the court. Section 75(n). Thereafter the purchaser of the land could not dispose of any part of it without accountability therefor if redemption be effected.

"The Alabama statute, Title 7, Sect. 32(6), provides that 'the purchaser shall be entitled to all rents paid or accrued to the date of redemption.' The Alabama court says of the purchaser, 'He is not a mortgagee in possession, but a purchaser, the absolute owner, entitled to the rents and profits and unimpeachable for waste.' *Cramer v. Watson*, 73 Ala. 127. An account as for waste in cutting trees before redemption has been denied. *Johnson vs. Davis*, 180 Ala. 143, 60 So. 799; *Duncan vs. Hornsby*, 236 Ala. 317, 181 So. 763. In fixing a redemption price Section 75(s) of the Bankruptcy Act modifies the price of redemption under the Alabama statute much as it does the price of redemption under mortgage contracts and the laws of other States, by substituting the present value of the land for other measures. We think the district court correctly held that the appraised value of the land is not to be reduced by rents and profits before the redemption takes place, because there is, as we have held, no right to possession; but if, pending the proceeding, the purchaser sells part of the very thing to be redeemed and realizes its value, he ought to credit that value on the redemption price. If, as Mrs. Wragg alleges, he has thus realized $1,500 by cutting timber, he will get $1,500 more and Mrs. Wragg will get $1,500 less in value than the redemption contemplates. It may be, however, that the timber was cut before the appraisal which appears to have been made Oct. 1, 1943, and not between that date and March 24, 1944, when the pleading which complains of it was filed. In that event the appraisal would have excluded the value of the timber, and no further adjustment would be necessary. The judge heard evidence on this pleading, but made no fact finding about the timber at all. He seems to have regarded the issue as irrelevant. The evidence has not been brought up. The refusal to consider the matter of the timber without finding either that no timber was cut or that it was cut before the appraisal seems to us to be in error on the face of the record, since the facts found do not fully support the

judgment. We reverse and remand the cause with direction to find what if any timber was cut from the land since the appraisal, and to deduct it from the redemption price; and to fix again a reasonable time to effect redemption or a sale of the right. Let the costs of this appeal be paid one-half by appellant and one-half by appellees."

REASONS FOR GRANTING

The Circuit Court of Appeals for the Fifth Circuit held in effect that the right of a farm debtor-bankrupt to have property administered in accordance with the provisions of Section 75 (s) of the Bankruptcy Act by being placed in possession of the property upon terms which will enable him, by paying a suitable rental, to redeem the property, should be denied unless the farm debtor-bankrupt has a right of possession under the state law. Such decision by the Circuit Court of Appeals is in conflict with the applicable decision of this Court and particularly the decisions of *Wragg v. Federal Land Bank*, 317 U. S. 325; and *Mangus v. Miller*, 317 U. S. 178.

The Circuit Court of Appeals for the Fifth Circuit held in effect that the administration of the property of a farm debtor-bankrupt is limited by the determination of whether, under the state law, the farm debtor-bankrupt had a right to possession. Such decision by the Circuit Court of Appeals is in conflict with the applicable decisions of this Court and particularly the decision of *Wragg v. Federal Land Bank*, 317 U. S. 325; *United States v. Pelzer*, 312 U. S. 399; *Mangus v. Miller*, 317 U. S. 178.

The Circuit Court of Appeals for the Fifth Circuit held in effect that the method of administering the right of redemption of a farm debtor-bankrupt was limited by the law of the State as to right of possession and could not be administered in accordance with the terms of Section 75 (s) of the Bankruptcy Act by placing the farm debtor-bankrupt in possession unless the State law gave to the mortgagor in default a right of pos-

session. Such decision by the Circuit Court of Appeals is in conflict with the applicable decisions of this Court and particularly the decisions of *Wragg v. Federal Land Bank*, 317 U. S. 325; *United States v. Pelzer*, 312 U. S. 399; *Mangus v. Miller*, 317 U. S. 178.

The Circuit Court of Appeals for the Fifth Circuit decided a federal question in a way probably in conflict with applicable decisions of this Court, to-wit: That a Bankruptcy Court should not determine the rights of the farm debtor-bankrupt to redeem and to have an accounting for rents, profits and timber, upon the status quo existing on the date her attempt to secure the benefits of Section 75 of the Bankruptcy Act was erroneously denied to her by the District Court.

The Circuit Court of Appeals for the Fifth Circuit decided a federal question in a way probably in conflict with applicable decisions of this Court, to-wit: The Circuit Court of Appeals by its decision denied to a farmer the income, rents, profits and growing timber and the benefit of increased value during the time her rights under Section 75 of the Bankruptcy Act were erroneously denied.

CONCLUSION

For these reasons it is respectfully submitted that this petition should be granted.

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